

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 92-202 ✓

In the Matter of

Amendment of Section 73.202(b),
Table of Allotments,
FM Broadcast Stations.
(Newberry Springs, California)

RM-8051

NOTICE OF PROPOSED RULE MAKING

Adopted: August 19, 1992; Released: September 3, 1992

Comment Date: October 26, 1992

Reply Comment Date: November 10, 1992

By the Chief, Allocations Branch:

1. Before the Commission for consideration is the petition for rule making filed on behalf of Hills Broadcasting ("petitioner") seeking the allotment of Channel 247A to Newberry Springs, California, as a first local aural transmission service. Petitioner stated its intention to apply for Channel 247A, if it is allotted to Newberry Springs, as requested.

2. Section 307(b) of the Commission's Rules of 1934, as amended, requires that channel allotments be distributed fairly, efficiently and equitably "... among the several States and communities." Communities are defined by the Commission as geographically, identifiable population groupings. As a general rule, if a community is incorporated or listed in the U.S. Census, that is sufficient indicate to its community status. Newberry Springs is not listed in the U.S. Census.¹

3. According to petitioner, Newberry Springs is located approximately 20 miles east of Barstow, California, and has an estimated 1991 population of 4,000 persons, according to the Newberry Springs Community Services District. However, we are unable to confirm the population count attributed to Newberry Springs by the petitioner, and will afford it an opportunity to provide supporting documentation in its comments. In view of the fact that Newberry Springs is not included in the U.S. Census, yet in recognition of Commission precedent requiring sufficient information in such instances to demonstrate that a locality qualifies as a community for allotment purposes,² peti-

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tioner provided information to support its proposal. Specifically, petitioner asserts that Newberry Springs is governed by a five member board, and that it has an elementary school, its own fire department, an independent library, a community center, five churches and service organizations. Therefore, based upon the petitioner's presentations, we will not request additional demographic information at this time.

4. A staff engineering review of the proposal reveals that Channel 247A can be allotted to Newberry Springs in conformity with the minimum distance separation requirements of Section 73.207(b)(1) and (3) of the Commission's Rules with a site restriction 2.5 kilometers (1.6 miles) north of the community.³ Additionally, since Newberry Springs is located within 320 kilometers (199 miles) of the Mexican border, the Commission must obtain concurrence of the Mexican government in the proposal.

5. We believe the public interest would be served by seeking comments on the requested allotment of Channel 247A to Newberry Springs, since an interest has been expressed in providing that community with its first local aural transmission service. Accordingly, we will seek comments on the proposed amendment to the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, with respect to Newberry Springs, as follows:

	Channel No.
City	Present Proposed
Newberry Springs, California	-- 247A

6. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

7. Interested parties may file comments on or before **October 26, 1992**, and reply comments on or before **November 10, 1992**, and are advised to read the Appendix for the proper procedures. Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554. Additionally, a copy of such comments should be served on the petitioner's counsel, as follows:

Peter Gutmann, Esq.
Pepper & Corazzini
1776 K Street, N.W.
Suite 200
Washington, D.C. 20006

¹ We note that Newberry Springs is listed in the 1992 *Rand McNally Commercial Atlas and Marketing Guide*, and attributed with a population of 900. However, geographical location, standing alone, is not sufficient to establish "community" status. See *Vimville, MS*, 48 Fed. Reg. 5974 (1983); and *Hannibal, OH*, 6 FCC Rcd 2144 (1991).

² See, e.g., *Gretna, FL*, et. al., 6 FCC Rcd 633 (1991); *Oak Grove, FL*, 5 FCC Rcd 3774 (1990); *Statenville, GA*, 5 FCC Rcd

2685 (1990); *East Hemet, CA*, et. al., 4 FCC Rcd 7895 (1989); and *Beaver Springs, PA*, 4 FCC Rcd 5373 (1989).

³ Coordinates at the restricted site for Channel 247A are 34-51-00 and 116-40-42. The site restriction is required to avoid a short spacing to the licensed site for Station KHTX(FM), Channel 248B, Riverside, California, at coordinates 33-57-57 and 117-17-21.

8. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. See *Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), and 73.606(b) of the Commission's Rules*, 46 FR 11549, February 9, 1981.

9. For further information concerning this proceeding, contact Nancy Joyner, Mass Media Bureau, (202) 634-6530. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

Michael C. Ruger
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut - off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See Section 1.420(a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street N.W., Washington, D.C.